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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/054,093	01/22/2002	Linh M. Bui	HO-P02206US0	3598
26271	7590	09/05/2007		
FULBRIGHT & JAWORSKI, LLP			EXAMINER	
1301 MCKINNEY			VU, JAKE MINH	
SUITE 5100				
HOUSTON, TX 77010-3095			ART UNIT	PAPER NUMBER
			1618	
			MAIL DATE	DELIVERY MODE
			09/05/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/054,093	Applicant(s) BUI ET AL.	
	Examiner Jake M. Vu	Art Unit 1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-3, 8-12, 17 and 58-60 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 8-12, 17 and 58-60 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Receipt is acknowledged of Applicant's Amendment filed on 06/27/2007.

- Claims 1 and 10 have been amended.
- Claims 58-60 have been added.
- Claims 1-3, 8-12, 17 and 58-60 are pending in the instant application.

### ***Claim Rejections - 35 USC § 112***

Claims 1-3, 8-12, 17 and 58-60 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. This is a new matter rejection.

Claims 1-3, 8-12, 17 and 58-60 recite the newly amended limitation of "about 50 to about 70%" and "about 50%"; however, the specification as-filed does not provide a written description or set forth the metes and bounds of this phrase. The specification only disclosed "about 35% to about 70%" and "50%". The instant claims now recite limitations which were not clearly disclosed in the specification as-filed and now change the scope of the instant disclosure as-filed. Such limitations recited in the present claims, introduce new concepts and thus violate the written description requirement of the first paragraph of 35 U.S.C. §112.

Applicant is required to cancel the new matter in the response to this Office action. Alternatively, Applicant is invited to identify sufficient written support in the original specification for the "limitations" indicated above.

### ***Double Patenting***

Claims 1-3, 8-12, 17 and 58-60 provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over copending Application No. 10/264,886 and 10/891,895 **are maintained** for reasons of record filed on 02/10/2006 in the previous office action.

Note, it is acknowledged that Applicant request that this rejection be held in abeyance until the conflicting claims are in fact patented.

### ***Claim Rejections - 35 USC § 103***

Claims 1-3, 8-12, and 17 rejected under 35 U.S.C. 103(a) as being unpatentable over HAND et al (US 5,431,927) in view of REMMEREIT (US 6,042,869) **are withdrawn** in view of Applicant's amendment filed on 06/27/2007. However, upon further consideration, a new ground(s) of rejection is made as discussed below.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which

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said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 8-12, 17 and 58-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over REMMEREIT (US 6,042,869) in view of HAND et al (US 5,431,927) and HANNAH et al (*Increased dietary protein spares lean body mass during weight loss in dogs*. Journal of Veterinary Internal Medicine. 1998:12. pg. 224).

Applicant's claims are directed to a process for producing a pet food product comprising the steps of adding: about 50-70% of protein; 4-10% of fat; 5-25% of fiber; 10-35% of carbohydrate; and 0.1-1% of a functional ingredient, such as conjugated linoleic acid. Wherein, the fat comprises of essential long-chain fatty acids and the composition is a dry or semi-moist pet food.

REMMEREIT disclosed a dry or semi-moist dog food comprised of functional ingredients, such as 0.1-2.5% of conjugated linoleic acid (see col. 14, line 1-50; col. 3, line 22-35; and abstract) and linoleic acid (see col. 3, line 28), which is an essential long-chain fatty acid. REMMEREIT further disclosed that the addition of conjugated linoleic acid in pet food increases the lean to fat ratio, effectively reducing body fat, and increases feed conversion efficiency in animals (see col. 1, line 55-64). REMMEREIT disclosed the dog food further contain meat, soy, animal fat, and wheat, which are protein, fiber, fat, and carbohydrate (see col. 14, line 1-49).

However, REMMEREIT does not disclose the actual percentage of the protein, fat, fiber, and carbohydrate in the dog food.

HAND disclosed a typical pet food (see col. 8, line 32) product comprised of: 10-35% of protein; 10-20% of fat; 10-25% of fiber; and 35-70% of carbohydrate, which are within Applicant's ranges except for protein.

HANNAH disclosed a high protein diet, such as 45% protein, would spare lean body mass during weight loss. Since Applicant's Specification does not define how much is "about 50%", the Examiner finds it reasonable to interpret 45% as about 50%

It would have been obvious to the person of ordinary skill in the art at the time the invention was made to incorporate the ranges of about 50% of protein; 10-20% of fat; 10-25% of fiber; and 35-70% of carbohydrate into REMMEREIT's dog food composition. The person of ordinary skill in the art would have been motivated to make those modifications, because these percentages are typical ranges in pet food and a high protein diet would increase the lean to fat ratio that REMMEREIT was seeking, and reasonably would have expected success because REMMEREIT disclosed dog food that contain protein, fat, fiber, carbohydrate, and conjugated linoleic acid.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

### ***Telephonic Inquiries***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jake M. Vu whose telephone number is (571) 272-8148. The examiner can normally be reached on Mon-Fri 8:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jake M. Vu, PharmD, JD  
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MICHAEL G. HARTLEY  
SUPERVISORY PATENT EXAMINER